IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

MFA.No. 1014 of 1999(A)

OPMV.112/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT(3RD RESPONDENT IN MV(OP):

THE BRANCH MANAGER, THE ORIENTAL INSURANCE CO. LTD., MATTANCHERRY, COCHIN-2, REP. BY THE DEPUTY MANAGER, MOTOR THIRD PARTY CLAIMS CELL, M.G.ROAD, ERNAKULAM, KOCHI - 682 035.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS(PETITIONERS AND RESPONDENTS 1 AND 2 IN MV(OP):

1.SALI THOMAS, W/O.LATE THOMAS,KARIKKANNY HOUSE, PERUMANNOOR KARA, KUTTAMANGALAM VILLAGE.

2.JIJO THOMAS (MINOR), AGED 3 YEARS, S/O.LATE THOMAS, KARIKKANNY HOUSE, PERUMANNOOR KARA, KUTTAMANGALAM VILLAGE, REP. BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.

3.JINTO THOMAS (MINOR), AGED 1 YEAR, S/O.LATE THOMAS, KARIKKANNY HOUSE, PERUMANNOOR KARA, KUTTAMANGALAM VILLAGE, REP. BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.

4.CHACKO,S/O.THOMAS, KARIKKANNY HOUSE, PERUMBAVOOR KARA, KUTTAMANGALAM VILLAGE.

5.ALEKUTTY,W/O.CHACKO, KARIKKANNY HOUSE, PERUMANNOOR KARA, KUTTAMANGALAM VILLAGE.

**6.T.P.RASHEED,S/O.VAVANNAN RAWTHER,
MARUTHUMGAL HOUSE, EDAVETTY P.O.,THODUPUZHA.**

**7.BAVU,S/O.HYDROSE KUTTY, VENIYAPURACKAL HOUSE,
NERIAMANGALAM KARA, NERIAMANGALAM VILLAGE.**

**BY ADV. SRI.SIBY MATHEW FOR R1 TO R5
SMT.ANEY PAUL**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.5508/1999 AND 8296/2000 IN M.F.A.1014/1999

DISMISSED.

/TRUE COPY/

SD/- J.B.KOSHY, JUDGE

19.7.2007 **SD/- K.P.BALACHANDRAN, JUDGE**

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1014 OF 1999 (A)

Dated this the 19th day of July, 2007

J U D G M E N T

KOSHY,J.

A cyclist was hit down by a mini lorry driven by the 2nd respondent (O.P.(MV)No.112/1996) and the above lorry was owned by the 1st respondent and insured by the 3rd respondent. Against a claim for compensation for Rs.5,00,000/-, tribunal awarded Rs.2,82,000/- with 12% interest from the date of application till deposit. The accident occurred on 9.10.1995. The appeal was filed by the 3rd respondent Insurance company contending that the driver was not having a badge at the time of accident and therefore there is breach of policy conditions and they are not liable to pay compensation. When Insurance company can be exonerated for payment of compensation was elaborately considered by the Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh and others (AIR 2004 SC 1531)*** and the points were summarised. Sub

paragraphs (i) (iii), (iv), (v) and (vi) are extracted below.

> (i). Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (iii). The breach of policy condition eg. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
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> (iv). The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefore would be on them.
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> (v). The court cannot lay down any criteria as to how said burden would be discharged, in as much as the same would depend upon the facts and circumstances of each case.
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> (vi). Even where the insurer is able to prove breach on the part of the insured concerning the policy

> condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act.

Here there is no case that mere absence of badge was the cause of the accident. He had a valid driving licence for driving the particular type of vehicle he was driving. It is also not proved by any witness that the owner of the lorry was negligent. Therefore applying the principle enunciated in ***Swaran Singh's case***, it cannot be contended by the Insurance company that they are not liable to pay the amount or indemnify the insured. In the above circumstances, appeal is liable to be dismissed. It is stated that a cross objection was also filed by the claimant contending that quantum awarded by the tribunal is very low. It is also contended that even though a salary certificate was produced employer was also examined to show that he was getting Rs.3,000/- per month. Only Rs.1,500/- was taken as monthly income. He was stated to be a carpenter by profession. Tribunal correctly found that

evidence given by the alleged employer cannot be believed as his accounts etc. were not produced. Claimant was aged 28 and even if he was a carpenter, Rs.3,000/- in 1995 cannot be his salary and Rs.1,500/- was taken as his salary in the absence of data. We see no ground to change the quantum of compensation awarded by the tribunal. Therefore we are not going into the contention of the Insurance company that they have to question the quantum of compensation, cross objection cannot be filed in the absence of specific rules in the Motor Vehicles rules. There is no merit in the appeal as well as in the cross objection and hence both appeal and cross objection are dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1014 OF 1999 (A)

J U D G M E N T

19th July, 2007